

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**V.F.W. POST NO. 1421
7712 BLUFFTON ROAD
FORT WAYNE, IN 46809
DOCKET NO. 29-20020316**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DEPARTMENTAL ORDER**

An administrative hearing was held on Tuesday, August 20, 2002 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, an Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Its Quartermaster John Dahman represented the Petitioner. Attorney Steve Carpenter, appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-1, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Departmental Order.

REASON FOR HEARING

On June 18, 2002 Petitioner's Indiana Charity Gaming Application was denied. The Petitioner protested in a timely manner. A hearing was conducted pursuant to IC § 4-32-8-1.

SUMMARY OF FACTS

- 1) Petitioner submitted its Indiana Department of Revenue Annual Bingo License Application CG-2 on April 17, 2002.
- 2) Based upon a review of Petitioner's application and an investigation by the Indiana Department of Revenue's Criminal Investigation Division the Petitioner's Indiana Charity Gaming Application was denied.

FINDINGS OF FACT

- 1) Petitioner submitted its Indiana Department of Revenue Annual Bingo License Application on April 17, 2002. (Department's Exhibit A).

- 2) The Department upon reviewing the application and an investigation by the Indiana Department of Revenue's Criminal Investigation Division determined that Petitioner had violated IC 4-32-9-20; IC 4-32-9-27; and IC 4-32-9-28. (Record at 6).
- 3) The Department then notified Petitioner by letter dated June 18, 2002, that their Indiana Charity Gaming Application was denied. (Record at 5).
- 4) The Department opines that the amount paid by Petitioner to rent its facility to conduct charity gaming may exceed the \$200 per day statutory limitation provided in IC 4-32-9-20(a). (Record at 8).
- 5) A review of the individuals listed on Petitioner's CG-2 showed that two individuals on the list were not members of Petitioner's organization, but paid bartenders a violation of IC 4-32-9-27 & 28. (Record at 11).
- 6) The Petitioner admitted at hearing that the two individuals listed as workers on its Indiana Form CG-2 were paid employees and not members of its organization and as such, should not have been listed as workers on its application. (Record at 26 & 27).
- 7) The Commander of Petitioner's Post stated in a sworn statement that the checking account listed on its Indiana Charity Gaming Application did not belong to the Post. (Department's Exhibit B).
- 8) Petitioner also admitted at hearing that they did not know the provisions of IC 4-32-9-17, requiring a separate and segregated charity gaming account, prohibited them from authorizing the opening of a separate individual account held by an individual member. (Record at 32 & 33).
- 9) Additionally, the Department contends that its denial was based upon the fact that the check that accompanied Petitioner's application was drawn on an account and signed by an individual who was not an officer of the organization.

STATEMENT OF LAW

- 1) Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).
- 2) The Department's administrative hearings are conducted pursuant to IC § 6-8.1-5-1 et seq. (See, Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993)).
- 3) Pursuant to 45 IAC 15-5-3(b)(7), "The hearing is not governed by any rules of evidence. The department is expressly excluded from the requirements of the Administrative Adjudication Act.(renamed the Administrative Order and Procedures Act)."

- 4) Even if the Department were bound by the Administrative Orders and Procedures Act (AOPA), the rules clearly state that hearsay evidence that is properly objected to and does not fall with an exception to the hearsay rule may not form the sole basis of a resulting order. The AOPA does not say that the evidence cannot be heard, presented, or considered.
- 5) IC 4-32-9-27 states, "An operator or a worker may not directly or indirectly participate, other than in a capacity as operator or worker, in an allowable event..."
- 6) IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event."
- 7) According to IC 4-32-9-29, "A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event."
- 8) IC 4-32-9-20 states, "Except as provided in subsection (d), if facilities are leased for an allowable event, the rent may not:
 - (1) be based in whole or in part on the revenue generated from the event; or
 - (2) exceed two hundred dollars (\$200) per day.
 - (b) A facility may not be rented for more than three (3) days during a calendar week for an allowable event.
 - (c) If personal property is leased for an allowable event, the rent may not be based in whole or in part on the revenue generated from the event.
 - (d) If a qualified organization conducts an allowable event in conjunction with or at the same facility where the qualified organization or its affiliate is having a convention or other meeting of its membership, facility rent for the allowable event may exceed two hundred dollars (\$200) per day. A qualified organization may conduct only one (1) allowable event under this subsection in a calendar year.
- 9) IC 4-32-12-1(a) (4) provides in pertinent part, "The Department may suspend... an individual ...for any of the following: (1) Violation of a provision of this article or of a rule of the department...(4) Commission of fraud, deceit, or misrepresentation."
- 10) The Indiana Department of Revenue Annual Bingo License Application CG-2 states on line 24, "The license fee for an organization's first Annual Bingo License is \$25.00 and must be paid with this application. The fee should be paid by a check drawn from **your not-for-profit checking account**. Make your check payable to: Indiana Department of Revenue." (Emphasis added).

- 11) IC 4-32-9-17 states, “A qualified organization shall maintain accurate records of all financial aspects of an allowable event under this article. A qualified organization shall make accurate reports of all financial aspects of an allowable event to the department within the time established by the department. The department may prescribe forms for this purpose. The department shall, by rule, require a qualified organization to deposit funds received from an allowable event in a separate and segregated account set up for that purpose. All expenses of the qualified organization with respect to an allowable event shall be paid from the separate account.” (Emphasis added).
- 12) IC 4-32-15-4 states, “A payment by a licensed entity to the department may not be in cash. All payments must be in the form of a check, a draft, an electronic funds transfer, or another financial instrument authorized by the commissioner. The department may require licensed entities to establish separate electronic funds transfer accounts for the purpose of making payments to the department.”

CONCLUSIONS OF LAW

- 1) The Department’s findings are prima facie evidence that the Department’s claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made.
- 2) Once again (having ruled on this issue previously) the mere fact that the amount of rent paid by Petitioner MAY exceed the \$200 statutory limitation is NOT SUFFICIENT to justify a denial of Petitioner’s charity gaming application.
- 3) The Petitioner admitted at hearing that the two individuals listed as workers on its Indiana Form CG-2 were paid employees and not members of its organization and as such, should not have been listed as workers on its application. A violation of IC 4-32-9-27 & 28.
- 4) Petitioner also admitted at hearing that they did not know the provisions of IC 4-32-9-17, requiring a separate and segregated charity gaming account, prohibited them from authorizing the opening a separate individual account held by an individual member.
- 5) Pursuant to IC 4-32-9-17, the organization conducting charity gaming must establish a separate and segregated charity gaming account. No other organization or individual may open or operate this account.
- 6) The provisions of IC 4-32-9-17 only applies to the deposit of funds and payment of expenses related to running allowable events not the submission of application fees.

- 7) When filing a completed Form CG-2, the appropriate application fee must accompany the application. As long as the fee is in valid United States legal tender, and conforms to the method of payment proscribed in IC 4-32-15-4, the Department must accept it.
- 8) The Department's CG-2 states, "The fee should be paid by a check drawn from your not-for-profit checking account..." The Department's own form states that the fee should be paid and does not use the terms shall or must. Additionally, the form does not state that an officer must sign the check or that it must be from a separate and segregated charity gaming account. The CG-2 merely states that the check should be drawn from "your not-for-profit checking account."
- 9) The Department's denial of Petitioner's application based upon the fact that the original application fee accompanying the CG-2 was a check drawn from another's account and that it was not signed by one of Petitioner's officers is not valid reason for a denial.

DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

Based upon Petitioner's admissions of its violations of IC 4-32-9-17, IC 4-32-9-27 & 28 its appeal is denied.

- 1) Under IC 6-8.1-5-1, the organization may request a rehearing. However, rehearings are granted only under unusual circumstances. Such circumstances are typically the existence of facts not previously known that would have caused a different result if submitted prior to issuance of the Departmental Order.
- 2) A request for rehearing shall be made within seventy-two (72) hours from the issue date of the Departmental Order and should be sent to the Indiana Department of Revenue, Legal Division, Appeals Protest Review Board, P.O. Box 1104, Indianapolis, Indiana 46206-1104.
- 3) Upon receipt of the request for rehearing, the Department will review the respective file and the rehearing request to determine if sufficient new information has been presented to warrant a rehearing.
- 4) The Department will then notify the organization in writing whether or not a rehearing has been granted. In the event a rehearing is granted, the organization will be contacted to set a rehearing date.
- 5) If the request for rehearing is denied or a request is not made, all administrative remedies will have been exhausted. The

organization may then appeal the decision of the Department to the Court of proper jurisdiction.

THIS ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN SEVENTY-TWO (72) HOURS FROM THE DATE THE ORDER IS ISSUED.

Dated: _____

Bruce R. Kolb / Administrative Law Judge